

ORIGINAL

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AUG 25 1989

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

Federal Communications Commission
Office of the Secretary

In re Application of
Jupiter Broadcasting Corp.

For a NEW FM radio station at
Jupiter, FL (Mutually exclusive
with the renewal application for
WTRU-FM, formerly WKSJ-FM,
Jupiter, FL)

File No. BPH-890103MD

To: Chief, Mass Media Bureau

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OPPOSITION TO PETITION TO DENY

FM EXAMINERS

1. Jupiter Broadcasting Corp. ("JBC"), through counsel, opposes the Petition to Deny dated July 20, 1989 submitted by Robert Taylor in this proceeding. Mr. Taylor's pleading is procedurally defective in that it violates Rules 1.47 and 1.52, and Section 309 of the Communications Act of 1934, as amended, 47 U.S.C. §309. Substantively, Mr. Taylor's allegations are either false or irrelevant.

PROCEDURAL MATTERS

2. Service. JBC is represented by counsel in connection with its efforts to obtain an FM construction permit in Jupiter, Florida. Mr. Taylor failed to serve his petition to deny on JBC's counsel and, therefore, violated the service requirements of Rule 1.47(d).

3. Subscription and Verification. Mr. Taylor claims that he is not represented by counsel in his efforts to oppose grant of JBC's applications. Accordingly, Mr. Taylor was required to sign and verify his petition to deny See Rule 1.52. His pleading has

no verification, however. Indeed this is the second unverified petition to deny Mr. Taylor has filed against a JBC application.¹ In opposing Mr. Taylor's first petition to deny, JBC specifically pointed out Mr. Taylor's failure to comply with Rule 1.52's subscription and verification requirements.² Mr. Taylor's continued violation of this rule is unjustifiable and his petition to deny should be stricken as false and sham.

4. Lack of Affidavits. Mr. Taylor's petition to deny is neither supported by affidavits of persons with personal knowledge of the facts alleged nor by materials subject to official notice. It totally fails to comply with the requirements of Section 309(d)(1) of the Communications Act of 1934, as amended, 47 U.S.C. §309 (d)(1).

SUBSTANTIVE MATTERS

5. Strike Conduct. Mr. Taylor alleges that JBC is using the Commission's license renewal process to force him to sell Stations WTRU-FM and WZIP to it. He notes Paul Levine and Charles Reid sought to purchase the stations at various times in 1987 and 1988. He claims that during a meeting at the stations in January 1989, "both Levine and Reid stated that since I refused to sell the station to them, they had decided to use the Commission's license renewal process to try to force me to sell to them." Mr. Taylor

¹ Mr. Taylor filed a petition to deny JBC's Jupiter, Florida AM application. That petition was dated April 6, 1989 and contained no verification.

² See Opposition to Petition to Deny filed in FCC File No. BP-890103AB on April 19, 1989.

further claims that on February 24, May 24 and July 11, 1989, Paul Levine asked him to sell his stations.

6. It is true that Paul Levine and Charles Reid made inquiries concerning the purchase of stations WTRU and WZIP prior to the filing of Jupiter Broadcasting Corp's applications. However, Mr. Taylor's claim that Mr. Reid and Mr. Levine told him JBC filed against his renewals to force him to sell the stations is thoroughly disingenuous.

7. As demonstrated in their attached declarations, Charles Reid and Paul Levine, visited the studios of WTRU/WZIP in January 1989 expecting to find the studios deserted. See Exhibits 1 and 2 appended hereto. Upon finding Mr. Taylor in the darkened studio building, they introduced themselves and asked for the stations' public files. After Mr. Taylor failed to produce complete public files, he engaged Mr. Reid and Mr. Levine in a conversation concerning JBC's applications. Mr. Taylor attempted to negotiate the dismissal of JBC's applications and was informed of JBC's belief that it would prevail at hearing. No one ever told Mr. Taylor that JBC filed its applications to force him to sell his stations. JBC filed its applications expecting to prevail in a comparative renewal proceeding.

8. Mr. Taylor's petition to deny leaves the reader with the false impression that Mr. Levine contacted Mr. Taylor in February, May and July of 1989 in attempts to coax Mr. Taylor into selling his stations to JBC. The converse is true. Mr. Taylor repeatedly contacted JBC seeking to have JBC dismiss its applications. First,

he tried to negotiate with Charles Reid and was told to direct his communications to JBC's counsel. He then attempted to go around both Mr. Reid and JBC's counsel by calling Mr. Levine.

9. Mr. Levine would not and could not negotiate for JBC. He did suggest that Taylor consider selling the stations to JBC, but only after Taylor repeatedly urged that JBC dismiss its applications.

10. Traditionally, strike allegations involve filings against new applicants. The showing required to establish strike misconduct when the filing is against an existing station is particularly high. Little Rock Radio Telephone Co., Inc., 50 RR 2d 1535, 1539 (1982). In the petition to deny context, the Commission has shown prudent deference to petitioners, despite allegation of strike conduct, noting:

"Even though the challenged applicant is undoubtedly put to the extra time and expense in defending his application, such burdens are an inseparable part of the statutory scheme under which the applicant seeks his authorization." Radio Carrollton, 69 FCC 2d at 1149. Thus, "we will not infer the existence of primary purpose to delay from the mere filing of a petition to deny, because a licensee who establishes 'standing' has a statutory right to bring to the Commission's attention public interest questions raised by a competitor's application and -- as already noted -- any 'delay' in considering a petition to deny is an inseparable part of the statutory scheme." Id. at 1150-51.

Viacom International, Inc., 63 RR 2d 290,293 (1987). Similar considerations bear on the evaluation of JBC's applications.

11. JBC has a statutory right to file applications conflicting with Mr. Taylor's renewal applications. JBC filed its applications in Jupiter, Florida with the expectation of prevailing

against Mr. Taylor in a comparative renewal hearing.³ Contrary to Mr. Taylor's arguments, JBC does not have to buy this proceeding. JBC can win it through the comparative renewal process applying the public interest standard. This is just the competitive spur that is the rationale of comparative renewals in the first place.

12. Sham Integration. Mr. Taylor accuses JBC of having a sham integration proposal because Charles Reid, a Black American, owns all of the voting stock in JBC. The answer to this charge is that Mr. Taylor can explore this matter fully under the standard comparative issue that will be specified in the comparative renewal proceeding. JBC is confident that Mr. Reid's integration proposal will withstand the strictest scrutiny.

13. Unethical Conduct. Mr. Taylor accuses JBC's counsel of misconduct, alleging that counsel once represented the licensees of Stations WZIP and WTRU. This is a thoroughly deceitful allegation. No one associated with Leibowitz & Spencer has ever represented a broadcast station owned in whole or in part by Robert Taylor. Exhibit 5 to Mr. Taylor's pleading demonstrates that, as of January 18, 1984, stations WZIP and WTRU were no longer represented by Leibowitz & Spencer. Mr. Taylor, himself, did not become an owner of the Jupiter stations until September 18, 1984. See letter dated September 18, 1984 from Robert B. Taylor to Federal Communications Commission, appended hereto as Exhibit 3.

³ Mr. Taylor's stations were off the air for much of the time he owned them. It would be remarkable, indeed, if Mr. Taylor received any sort of renewal expectancy for his performance during the license period.

Accordingly, Leibowitz & Spencer has received no confidential information from Mr. Taylor whatsoever.

14. Mr. Taylor asserts that Leibowitz and Spencer possesses confidential information relating to a portion of the license renewal period that stations WZIP and WTRU will be evaluated on. This is wishful thinking.⁴ License renewals are evaluated on the basis of the incumbent's past broadcast record. See WI00, Inc., 54 RR2d 1291, 1305 (1983). The performance of Mr. Taylor's predecessors is irrelevant to assessing Mr. Taylor's qualifications for license renewal. See Field Communications Corp., 43 RR2d 689, 690 n.1 (1978).

15. Site Suitability. Mr. Taylor claims that JBC cannot obtain zoning for its proposed transmitter site, speculating that the Town Council of Jupiter will not permit construction of JBC's proposed tower. The fact is that JBC is not required to seek zoning for its site prior to obtaining a construction permit for its station. The Commission's case law establishes a strong presumption that zoning will be forthcoming. WLCY-TV, Inc., 43 FCC 2d 818, 819 (Rev. Bd. 1973).⁵ Mr. Taylor has submitted no

⁴ It is not surprising that Mr. Taylor wants to run on someone else's broadcast record. He has kept his Jupiter stations off the air when they should have been serving the needs of their service area.

⁵ This presumption cannot be overcome by a demonstration that the antenna site is in an area where land use ordinances restrict towers to heights below the applicant's proposed antenna height. Edward G. Atsinger III, 29 FCC 2d 443, 449-451 (Rev. Bd. 1971). The opinion of an attorney that zoning approval will be difficult to obtain is insufficient to rebut the presumption. Cornwall Broadcasting Corp., 47 RR 2d 869, 870 (Ass't. Chief Admin. L.J. 1980). Indeed, sworn statements from less-than-a-majority of

substantial data that could overcome the Commission's presumption of zoning availability.


16. Air Hazard. Finally, Mr. Taylor states that "in my [Mr. Taylor's] contacts with the Federal Aviation Administration in recent months, the FAA has advised me and others that a tower of the height proposed by "Jupiter Broadcasting Corp." would not be allowed by the FAA at that location." This is an outrageous falsehood. The FAA approved JBC's proposed FM tower on March 15, 1989, four months before Robert Taylor filed his petition to deny. See Exhibit 4, hereto. If Mr. Taylor made any effort at all to verify the truth of his allegations against JBC, he knew that FAA approval of JBC's site was a fait accompli.

the members of a zoning Commission are likely to be insufficient to overcome the Commission's presumption that zoning will be made available. Edward G. Atsinger, supra at 451.

CONCLUSION

17. JBC submits that Robert Taylor's July 20, 1989 petition to deny is a desperate and deceitful attempt to smear an applicant Mr. Taylor cannot hope to defeat in a hearing. Far from demonstrating any defect in JBC's proposal, the pleading reveals Mr. Taylor's willingness to file patently false allegations with the Commission. The petition should be stricken as false and sham pursuant to Rule 1.52. If considered on its merits, it should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph A. Belisle". The signature is fluid and cursive, with the first name "Joseph" and last name "Belisle" clearly distinguishable.

Joseph A. Belisle
Counsel for
Jupiter Broadcasting, Inc.

August 24, 1989

Leibowitz & Spencer
3050 Biscayne Blvd., Suite 501
Miami, Florida 33137
(305) 576-7973

EXHIBIT NUMBER 1

DECLARATION OF CHARLES REID

DECLARATION

My name is Charles Reid and I am President of Jupiter Broadcasting Corp.

In January 1989, after Jupiter Broadcasting Corp.'s applications for new AM and FM stations in Jupiter, Florida were filed, I took Paul Levine over to see the studio of Robert Taylor's Jupiter radio stations. The stations had been off-the-air for a long time and we did not expect to meet anyone at the stations.

When we arrived at the studio, the front door was open. The studio had been vacant, with its door shut and locked, on other occasions when I had examined the site. Paul Levine knocked on the door and called out. Robert Taylor came to the door and we introduced ourselves.

Mr. Levine and I asked Mr. Taylor to see his stations' public files. Mr. Taylor could only produce copies of the stations' renewal applications and a petition to deny filed by Jose Oates.

Mr. Taylor tried to convince me that Jupiter Broadcasting Corp. should abandon its efforts to challenge his stations' renewals. He indicated he had no money to pay off a renewal challenge. Paul Levine and I told him we didn't want his money.

Mr. Taylor wanted Jupiter Broadcasting Corp. to take his AM license in exchange for dismissing its FM application. I told him that he had failed to serve the public interest with his stations and I expected to get both licenses in the comparative renewal proceeding.

At no time in our conversation with Mr. Taylor did Paul Levine or I indicate that Jupiter Broadcasting Corp. filed its Jupiter Florida applications to force Robert Taylor to sell his stations. I am confident Jupiter Broadcasting Corp. can show that Mr. Taylor has not earned renewal of his Jupiter broadcast licenses. Jupiter Broadcasting Corp. is ready and willing to prosecute its applications through a comparative renewal hearing.

The next time I communicated with Mr. Taylor was in early February 1989. Mr. Taylor called me and wanted to meet me for coffee to discuss our applications. I called our lawyer, Joseph Belisle, and was advised that this would be a bad idea because of the potential for misunderstanding. I had our counsel call Mr. Taylor and cancel the meeting. At that time Mr. Belisle asked Mr. Taylor to communicate with Jupiter Broadcasting Corp. by having Mr. Taylor's lawyer communicate with Mr. Belisle. Mr. Taylor called me after talking to Mr. Belisle and said that I misunderstood his request to meet with me. He said he wanted to discuss what he could do for me, personally. I told him I wasn't interested in that kind of discussion. Mr. Taylor subsequently tried to circumvent Mr. Belisle's request that communications go through counsel by contacting Paul Levine.

I declare under penalty of perjury that the matters stated above are true.


Charles R. Reid

EXHIBIT NUMBER 2

DECLARATION OF PAUL LEVINE

DECLARATION

My name is Paul J. Levine and I am one of three non-voting shareholders in Jupiter Broadcasting Corp.

After Jupiter Broadcasting Corp. filed its application for Jupiter AM and FM facilities, I went to Jupiter with Charles Reid to look at the silent facilities of Mr. Taylor's stations. These stations had been off the air for a considerable time. We did not expect to meet anyone at the stations.

When Mr. Reid and I arrived at the studio, the front door to the office was open. There was no electricity on and the place was dark. I knocked on the door and yelled something to the effect "Hello there." Mr. Taylor came out and we introduced ourselves to each other.

We asked to see the stations' public file. There was nothing in the file but the stations' renewal applications and a petition to deny filed by a third party.

After Mr. Taylor realized who Mr. Reid and I were, he attempted to resolve the conflict between his renewal applications and Jupiter Broadcasting Corp's applications. He told Mr. Reid and me that he was not a rich man and that we could not get money out of him. We told him that we didn't want money.

He then offered to give us the AM license if Jupiter Broadcasting Corp. would dismiss its FM application. Mr. Reid told Mr. Taylor that he had failed to serve the interests of the people of Jupiter and that Jupiter Broadcasting Corp. would prevail before the FCC.

At no time during this conversation did Mr. Reid or I say that Jupiter Broadcasting Corp. filed its applications to force Mr. Taylor to sell his Jupiter, Florida stations. We never expressed or implied that Jupiter Broadcasting Corp's applications were an FCC authorized tool to force Mr. Taylor to sell his stations.

I did have telephone conversations with Mr. Taylor after meeting with him in Jupiter. Each one of these telephone calls was initiated by Mr. Taylor, not me. My first telephone conversation with Mr. Taylor occurred after Mr. Taylor had first called Chuck Reid and sought to talk settlement. I told Mr. Taylor that we should deal through counsel to avoid misunderstandings between the applicants.

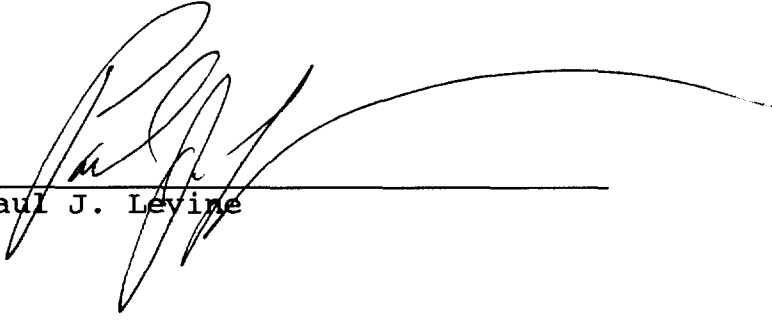
The next time Mr. Taylor called me, he asked if Jupiter Broadcasting Corp. would dismiss its AM application so he could sell his AM station to a third party.

In July 1989, Mr. Taylor called me and told me that the FCC had opened up two new FM channels, one in White City, Florida and the other in Jupiter. He offered use of his tower site if Jupiter Broadcasting Corp. would apply for the new Jupiter channel.

Each time Mr. Taylor called me he urged Jupiter Broadcasting Corp. to dismiss its applications. In response to Mr. Taylor's arguments, I did tell him he should consider selling his stations to Jupiter Broadcasting Corp. Communicating this message was not

the purpose of any of my conversations with Mr. Taylor, however. I have not sought to initiate settlement negotiations with Mr. Taylor and I have no authority from Jupiter Broadcasting Corp. to conduct settlement negotiations with Mr. Taylor.

I declare under penalty of perjury the matters set out above are true.



Paul J. Levine

EXHIBIT NUMBER 3

**Letter Dated September 18, 1984
from Robert Taylor to
Federal Communications Commission**

 *Unforgettable*

WVSI AM/FM
Radio

OCT 16 1984

"THE STATION OF THE STARS"

September 18, 1984

Federal Communications Commission
Attn: Office 8700
Washington, D.C. 20554


RE: WVSI-FM, file number BTCH840521GP
WVSI, file number BTC840521G0

Gentlemen:

The transfer of stock of U.S. Two Broadcasting Corp., U. S. Three Broadcasting Corp., and their parent R & R Broadcasting Corp. from Raymond E. Knappe to Robert Bostwick Taylor as authorized by the Federal Communications Commission on July 24, 1984, was consummated on September 18, 1984.

Enclosed are FCC Form 323 for both stations (Ownership Report).

Yours truly,


Robert B. Taylor, Pres.
U.S. Two Broadcasting Corp.
U.S. Three Broadcasting Corp.
R & R Broadcasting Corp.


Enc.

EXHIBIT NUMBER 4

DETERMINATION OF NO HAZARD

DO NOT REMOVE CARBONS

Form Approved OMB No. 2120-0001

 U.S. Department of Transportation Federal Aviation Administration	NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION		Aeronautical Study Number 89-ASO-66-OE

1. Nature of Proposal A. Type <input checked="" type="checkbox"/> New Construction <input type="checkbox"/> Alteration		B. Class <input checked="" type="checkbox"/> Permanent <input type="checkbox"/> Temporary (Duration _____ months)	C. Work Schedule Dates Beginning <u>FCC</u> End <u>APPROVAL</u>
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3A. Name and address of individual, company, corporation, etc. proposing the construction or alteration. (Number, Street, City, State and Zip Code) (407) 881-7460 area code Telephone Number MR. CHUCK REID JUPITER BROADCASTING, INC. 1260 W. THIRD ST. RIVIERA BEACH, FL 33404	2. Complete Description of Structure A. Include effective radiated power and assigned frequency of all existing, proposed or modified AM, FM, or TV broadcast stations utilizing this structure. B. Include size and configuration of power transmission lines and their supporting towers in the vicinity of FAA facilities and public airports. C. Include information showing site orientation, dimensions, and construction materials of the proposed structure.
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B. Name, address and telephone number of proponent's representative if different than 3 above. KENNETH DEVINE (504) 866-3846 BROADCAST TECHNICAL, INC. PO BOX 13475 NEW ORLEANS, LA 70185	ANTENNA TOWER 995 MHZ 3.0 KW
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4. Location of Structure A. Coordinates (To nearest second) 26° 56' 40" Latitude 80° 05' 30" Longitude	B. Nearest City or Town, and State JUPITER, FL (1) Distance to 4B 0.0 Miles (2) Direction to 4B WITHIN CITY LIMITS OF JUPITER	C. Name of nearest airport, heliport, flightpark, or seaplane base PALM BEACH - MARTIN COUNTY HELIPORT (1) Distance from structure to nearest point of nearest runway 1.5 MILES (2) Direction from structure to airport 189 DEGREES	5. Height and Elevation (Complete to the nearest foot) A. Elevation of site above mean sea level 1 B. Height of Structure including all appurtenances and lighting (if any) above ground, or water if so situated 356 C. Overall height above mean sea level (A + B) 357
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D. Description of location of site with respect to highways, streets, airports, prominent terrain features, existing structures, etc. Attach a U.S. Geological Survey quadrangle map or equivalent showing the relationship of construction site to nearest airport(s). (If more space is required, continue on a separate sheet of paper and attach to this notice.)

.09 MILES DUE EAST OF STATE ROAD 811, ADJACENT TO JUPITER INLET WATERWAY, CITY OF JUPITER, PALM BEACH COUNTY, FLORIDA. SEE ENCLOSED CHART

Notice is required by Part 77 of the Federal Aviation Regulations (14 C.F.R. Part 77) pursuant to Section 1101 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1101). Persons who knowingly and willingly violate the Notice requirements of Part 77 are subject to a fine (criminal penalty) of not more than \$500 for the first offense and not more than \$2,000 for subsequent offenses, pursuant to Section 902(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472(a)).

I HEREBY CERTIFY that all of the above statements made by me are true, complete, and correct to the best of my knowledge. In addition, I agree to obstruction mark and/or light the structure in accordance with established marking & lighting standards if necessary.

Date	Typed Name/Title of Person Filing Notice	Signature
DECEMBER 27, 1988	KENNETH DEVINE, TELECOMMUNICATIONS CONSULTANT	<i>Kenneth Devine</i>

FOR FAA USE ONLY

The Proposal <input type="checkbox"/> Does not require a notice to FAA. <input checked="" type="checkbox"/> Is not identified as an obstruction under any standard of FAR Part 77, Subpart C, and would not be a hazard to air navigation. <input type="checkbox"/> Is identified as an obstruction under the standards of FAR Part 77, Subpart C, but would not be a hazard to air navigation. <input checked="" type="checkbox"/> Should be obstruction marked. <input checked="" type="checkbox"/> Requires FAA Advisory Circular 34-549. <input type="checkbox"/> Obstruction marking and lighting are not necessary.	Supplemental Notice of Construction FAA Form 7400-2 is required any time the project is abandoned, or <input checked="" type="checkbox"/> At least 48 hours before the start of construction. <input checked="" type="checkbox"/> Within five days after the construction reaches its greatest height. This determination expires on <u>9/5/89</u> (a) extended, revised or terminated by the issuing office. (b) the construction is subject to the licensing authority of the Federal Communications Commission and an application for a construction permit is made to the FCC prior to the above expiration date. In such case the determination expires on the date prescribed by the FCC or the completion of construction, or on the date the FCC denies the application. NOTE: Request for extension of the effective period of this determination must be postmarked and delivered to the issuing office at least 15 days prior to the expiration date. If the structure is subject to the licensing authority of the FCC, a copy of this determination will be sent to that Agency.
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CERTIFICATE OF SERVICE

I certify that copy hereof has been furnished to :

Mr. Robert B. Taylor
500 N. Delaware Blvd.
P.O. Box 848
Jupiter, Florida 33458

via First Class mail, postage prepaid this 25th day of August,
1989.

Dawn King
Dawn King